YALE
LAW JOURNAL

Vol. XXX JANUARY, 1921 No. 3

TABULAE MINORES JURISPRUDENTIAE*

ALBERT KOCOUREK
Northwestern University

A jural relation has been elsewhere defined as a situation of legal and material fact upon which one by his own will may restrict or claim to restrict, presently or contingently, with the aid of the law, freedom of action of another.[1]

There are two major types of jural relation and two sub-types. The major types are "claim" and "power" and the sub-types are "immunity" and "privilege." A claim relation is where one may effectively (i. e. with the aid of the law) require an act; an immunity relation is where one may effectively repel an act; a privilege relation is where one may effectively decline an act; and a power relation is where one may act effectively toward another. An essential element of legal relations (*juris nexus*) and of legal rules is constraint based on legal sanctions, whether of nullity, punishment or other physical coercion, liabilities, or the imposition of new duties. Without constraint there can be neither jural relation in a strict sense nor a legal rule. All else is non-jural and non-legal.

It is sometimes urged that any fact which comes within the scope of

* [This article was submitted by Professor Kocourek at the request of the editors. Several other articles along the same lines have been published by him during the past year in (1920) 15 ILL. L. REV. 24, (1920) 20 COL. L. REV. 394, (1920) 68 PA. L. REV. 322, (1920) 19 MICH. L. REV. 47, (1920) 15 ILL. L. REV. 347. These should all be read in order to get the full force of Professor Kocourek's analysis and terminology. Certain of his differences with the conclusions of Professor Wesley N. Hohfeld [as stated in the latter's articles on *Some Fundamental Legal Conceptions as Applied in Judicial Reasoning* (1913) 23 YALE LAW JOURNAL, 16, and (1917) 26 *id.* 710 (published in pamphlet form, 1919)] are considered in the immediately succeeding article by Professor Corbin in this number.—ED.]

[1] Kocourek, *Various Definitions of Jural Relations* (1920) 20 COL. L. REV. 394, 412.

adjudication necessarily is of a legal nature. Thus, it has been supposed that the lack of power in X, a stranger to a title, to convey it, is a legal immunity in O, the owner of the title, and that, therefore, X and O are in a legal relation (*nexus*) to each other as to the specific act in question (i. e. an attempted transfer of the title); since, if the matter should be judicially presented, it would be determined that X had no power to affect the interests of the true owner.[2] Barring any question of slander of title, the illustration does not exhibit a jural situation in a strict sense. There is not involved in it, at any point, the element of legally restrained conduct. An attempted conveyance by a stranger to a title (apart from slander of title or cloud) is a simple nullity, and the situation is without legal significance. It may readily be admitted that a determination of the fact of the lack of power may be practically important, but this importance is not different from the determination, in the course of litigation, of the negative of any other mere assertion of legal relation.

The negative declaratory judgment is also instanced as an example of a jural relation not involving constraint.[3] This illustration is analogous and is supported or falls by the same reasoning. The negative declaratory judgment is, in effect, simply a reversal of the ordinary procedure.[4] While, in the usual procedure, the asserter of a legal relation sues, in the negative declaratory judgment procedure, the denier of the claimed relation begins the offensive. Where the asserter fails in his action, and where the denier succeeds, the result is precisely the same. The judgment is "no-claim" or "no-right" in each case. But the circumstance that a court has adjudicated such a negative, while it demonstrates that a legal operation has been performed and that practical issues have been settled, does not warrant the belief that any legal relation between the parties existed prior to the litigation, at least in the case of an ordinary action at law.

The qualification is necessary. The declaratory judgment procedure is a step in advance not only in procedural reform, but also in juristic contemplation. Where, in the absence of the declaratory judgment procedure, the making of an unfounded claim before an action is commenced, is not in any way noticed by the law, and, therefore, has no legal significance either in what is claimed or in the actual fact (no-claim), in the declaratory judgment procedure the mere assertion of a no-claim as a claim, is sufficient to set in motion procedural action to establish the negative. In the latter case, a jural situation exists *prior* to suit, in this, that there is legally restrained conduct; the as-

[2] Cf. Hohfeld, *Fundamental Legal Conceptions as Applied in Judicial Reasoning* (1919) 60, 96.

[3] Cf. Borchard, *The Declaratory Judgment* (1918) 28 YALE LAW JOURNAL, 1, 9, 105; see also by the same author, COMMENTS (1920) 29 *id.* 545.

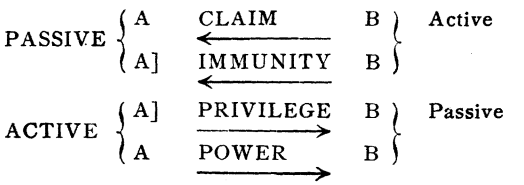
[4] Prof. Borchard admits this: "strictly speaking, judgments dismissing a complaint are declaratory in their nature." (1918) 28 *id.* 5, note 12.

serter being under a negative duty not to make an unfounded claim, the sanction of which duty is a liability to be proceeded against in a declaratory action. In the ordinary procedure, there is neither duty nor liability in the making of an unfounded claim prior to litigation; but juristic analysis requires that the commencement of a suit on an unfounded claim be considered a breach of duty, the sanction of which is nullity of the action, and, in the judgment for the defendant, the creation of a new duty not to recommence the suit (*res judicata*). In the one case (ordinary procedure) the making of an unfounded claim has no legal significance, but there is a legal duty not to bring suit; in the other case (declaratory procedure) there is a duty not to make an unfounded claim.

The four types of jural relation above enumerated represent the four exclusive, legal types of motion in jural acts considered with reference to any two persons. They may be represented in the following diagram:

TABLE I

JURAL RELATIONS



[A is the *dominus* and B the *servus* of the jural relation. The arrows indicate the direction of the act. The brackets mean that the act can be obstructed. When a jural relation is active or passive from the standpoint of the *dominus,* it is passive or active, respectively, from the standpoint of the *servus.* But since the relation is always controlled by the *dominus,* it will be convenient to speak of jural relations as 'active' or 'passive' from the standpoint of the *dominus.*]

Examples of each of the foregoing relations are as follows: claim, the "right" of the holder of a note to have payment; immunity, "right" of a juror to be free from arrest; privilege, "right" to make privileged communication; power, "right" of pledgee to sell his security.

Each of the four enumerated jural terms has a correlative as shown in the following table:

TABLE II

JURAL CORRELATIVES

CLAIM DUTY	IMMUNITY DISABILITY	PRIVILEGE INABILITY	POWER LIABILITY

I

For practical advantage, it is unnecessary to dichotomize jural relations, since there are only two generic types which can never be juristically confused, viz., claims and powers. Capability to require with legal effect an act *from* another would not be mistaken for a capacity to act with legal effect *toward* another. But it is possible that a power whether growing out of a jural relation or not, might be confused with the non-jural concept of liberty (the capability to act without legal consequences). For example, performance by one of the parties, of an unenforceable contract, might raise a difficulty of choice whether the act of performance is one of liberty or of power.[5] But, even here, dichotomy is not practically useful, since the series is already exhausted by the first step of division. Therefore, a table of negatives (contradictories) probably serves no direct or important practical purpose in legal analysis.[6]

If it is considered desirable for any juristic purpose to construct a table of jural contradictories, some discrimination will be necessary in observing various types of negation not considered in the usual textbook on logic.

For example, if a concrete but yet unknown idea is under investigation, we may say of it, (1) that it is jural or non-jural; (2) if jural, that it involves a dominant, active relation (where the *dominus* of the relation acts toward another) or a dominant passive relation (where

[5] There are cases where "power" acts and "liberty" acts coincide (e. g. destruction or consumption by the owner, of his chattel, but the jural aspect of these instances is relatively unimportant and they may be ignored for practical purposes. In all other cases it is unnecessary and inconvenient, if not even incorrect, to speak of the exercise of a power as a "liberty." Thus Professor Hohfeld, speaking of the "right of entry" (Hohfeld, *op. cit.* note 2, at p. 55), says that the grantor has "(1) the privilege [liberty] of entering, and (2) the power, by means of such entry, to divest the title of the grantee." For a further criticism of this usage, see Kocourek, *The Hohfeld System* (1920) 15 ILL. L. REV. 24, 27 a. Professor Hohfeld instanced still another case which raises the same question (Hohfeld, *op. cit.* note 2, at p. 39): "If ... X has contracted with Y to go on the former's own land, it is obvious that X has, as regards Y, both the privilege [liberty] of entering and the *duty of entering.*" In answer to this it may be said that it is difficult to see how X has juristically a liberty to do what he is compelled to do. Choice is of the very essence of liberty. If all the doors are closed but one and X is commanded to go through that, X's liberty can be declared only in a Pickwickian sense.

In lawyers' parlance and in colloquial speech rights in the strict sense are not infrequently spoken of as if they were susceptible of being exercised. This occurs in cases of rights *in personam* involving repeated performance. Thus a landlord may be said to be exercising his right of collecting his rents. It occurs more frequently where repeated possessory acts are performed in the enjoyment of rights in land of others. Thus, it is said the dominant tenant exercises his servitude or right of way. See for a judicial illustration, (1880) 1 ENT. D. RG. 101.

[6] Cf. Kocourek, *op. cit.*, (1920) 15 ILL. L. REV. 24, 28b.

the *dominus* controls the act of another toward himself); (3) if active, that the dominant or the servient side of the relation is in question; (4) if the dominant side is represented, that it is a power or a privilege. This is typically, for jural ideas, the process of exhaustive division in accordance with the logical rule, *divisio non faciat saltum.*

If however, the process of negation is begun, not from the highest genus downward, but from a negation of a given jural concept, we encounter first of all two types of negation: general, and specific. Thus, in the negation of power, we get "no-power." No-power as a "general negative" of power may mean, in addition to "inability," any one of the six remaining fundamental jural ideas—claim, duty, immunity, disability, privilege, liability. While a general negative does not exhibit any of its qualities in advance, a "specific negative" already shows its specific character. Thus, no-power as the specific negative of power extended into its full meaning, signifies "disability" as a correlative of "immunity," since no-power, in this specific sense, shows that it belongs to the passive group of jural relations (where the act is under control of another as *dominus*) and in which the quality of the relation is such that one acting is under an incapability which at once fixes its position according to Table I, *supra.*

Again, it is necessary in the use of negatives to discriminate between those which are ultimate and intermediate. An ultimate negative is one which is not further reducible, and which, in denying the existence of a given jural relation, excludes the possibility of any other.

The following table (p. 220) shows the correlatives systematically arranged and contrasted with their general and specific negatives.

TABLE III

NEGATIVE CORRELATIVES

3	2	1	1	2	3
NEGATIVES		DOMINANT	SERVIENT	NEGATIVES	
SPECIFIC	GENERAL	CORRELATIVES		GENERAL	SPECIFIC
Inability	No-Claim*	CLAIM	DUTY	No-Duty *	Privilege
Liability	No-Immunity	IMMUNITY	DISABILITY	No-Disability	Power
Duty	No-Privilege	PRIVILEGE	INABILITY	No-Inability	Claim
Disability	No-Power *	POWER	LIABILITY	No-Liability *	Immunity

[The general negatives distinguished by an asterisk indicate those which may be ultimate.]

So far as this table may be thought to have any importance for indicating the various forms of jural negatives, for indicating the terminology which is applicable to these forms, or as a basis for legal analysis, it may not be unprofitable before leaving this topic, to show by another illustration how the specific negatives are obtained.[7] Taking for the illustration, the first combination of correlatives, claim—duty, we have no difficulty in understanding that no-claim and no-duty are respectively the general negative correlatives. These terms may be either ultimate or intermediate. As ultimate terms, no-claim and no-duty contradict the jural relation posited (claim—duty) and exclude the possibility of any other jural relation. The usual "judgment for defendant" finding is a general, ultimate negative. If, however, the terms no-claim and no-duty are not ultimate, but are only intermediate negatives, it is then necessary to state the specific negatives. While the solution is perhaps not always superficially apparent, yet the specific negative, as the name implies, is predetermined.

The term claim (Table I) is a dominant passive concept (i. e., it involves capability in the *dominus* of the relation to control the acts of another toward the *dominus*). The negative of claim (no-claim) extended into a paraphrase, means: no-capability to control the act of another toward oneself. This implies an existing jural relation of which another is *dominus*. Since the concept posited was a dominant passive one, the negative concept must be a servient passive one, and the specific relation, therefore, must be one of privilege or of power in another person as *dominus*. The real difficulty of the problem is now encountered. What governs the choice between privilege and power? In both cases, there is a lack of capability to control the act of another. A re-examination of the paraphrase becomes necessary. Claim means, as we have seen, a capability to require with legal effect an act from another. The negation of this is lack of capability to require an act from another. The connotation, therefore, is inability rather than lia-

---

[7] In the celebrated essays on jural relations of Professor Hohfeld there is set forth (Hohfeld, *op. cit.* note 2, at pp. 36, 65) a table called Jural Opposites, as follows:

JURAL OPPOSITES				
Right	Duty	Power	Immunity
No-Right	Privilege	Disability	Liability

An effort has been made elsewhere to show that what Professor Hohfeld probably intended to outline was not a table of opposites in the sense of logic, but a table of negatives (contradictories); see Kocourek, *op. cit.* (1920) 15 ILL. L. REV. 24, 27 ff.

The other two terms privilege and immunity cannot be conveniently discussed here in comparison with Table III, *supra*, for the reasons that privilege, so far as it is the synonym for liberty, is entirely excluded here as not possessing any jural character, and that immunity (non-subjection to power) is used in a radically different sense in this discussion (see Table I, *supra*).

bility and we accordingly reach the conclusion that the specific negative of claim is inability as the correlative of privilege. Since claim and privilege and immunity and power, respectively, are negatives,[8] no difficulty will be met in arriving at the specific negatives of other jural concepts.

The jural idea just analyzed may be illustrated by the so-called "right" of deviation. Ordinarily, the owner of land may require others to keep off his land. In juristic language, the owner has a claim which is correlative to a duty, the content of which is a negative act, viz., to keep off the owner's land. But in exceptional cases, a traveler on an obstructed highway may deviate onto adjacent private land. In juristic language, the traveler has the privilege of declining the negative act, and the owner of the land is under an inability to require the negative act. It will be observed here that the locution of practical speech is metonymic. When we say that the traveler has the privilege of deviating onto the land of another what is meant is, as already shown, the capability to decline a negative act which is expressed in a positive act, i. e., the power of entering.

The same result is reached by the same process when proceeding from a servient concept. Thus, in determining the specific negative of duty, we find that duty is a servient, active concept. The negative, therefore, is a dominant, active concept which must be either privilege or power, and since duty involves legal compulsion to act toward another, the specific negative (i. e., no legal compulsion to act toward another) clearly indicates a privilege.

A table of these forms of negation follows:

TABLE IV

FORMS OF JURAL NEGATIVES

NEGATIVES		CORRELATIVES		NEGATIVES	
SERV. PASS.	DOM. PASS.	CLAIM	DUTY	SERV. ACT.	DOM. ACT.
SERV. PASS.	DOM. PASS.	IMMUNITY	DISABILITY	SERV. ACT.	DOM. ACT.
SERV. ACT.	DOM. ACT.	PRIVILEGE	INABILITY	SERV. PASS.	DOM. PASS.
SERV. ACT.	DOM. ACT.	POWER	LIABILITY	SERV. PASS.	DOM. PASS.

[8] Negative or contradictory means that when two given persons are *nexus*, a given act either can be required by one from the other (claim), or that it cannot be required by one from the other (privilege); or that a given act either can be done effectively by one against the other (power), or that it cannot be done effectively by one against the other (immunity).

II

Up to this point we have discussed only jural relations in the strict sense, i. e., those situations where one person, the *dominus,* may control with legal effect (i. e., with the aid of the law), the conduct of another, the *servus.* We now proceed to consider a series of situations which resemble jural relations in the strict sense, and which for various purposes are recognized by the law, but which differ from strict jural relations in the lack of a capability of legal constraint in the *dominus* of the situation over another. We may avoid, for the present, giving these quasi-jural relations a distinctive name, but it will be convenient to distinguish the species of jural relations by the qualification "nexal" and the species of quasi-jural relations by the qualification "simple." Thus, we will have a series of quasi-jural relations (simple claim, simple immunity, simple privilege, and simple power) in contrast with the series of jural relations (nexal claim, nexal immunity, nexal privilege, nexal power.)

Simple Claim. If a contract is made which unnecessarily restrains trade, but which does not involve an illegal act, the party whose conduct is unduly restrained may perform if he chooses.[9] The claim against him to perform cannot be made effective by legal coercion. It is defective for excessiveness, and it is accordingly reduced to the level of a simple claim.

A claim unenforceable because of the bar of the statute of limitations or the statute of frauds is also a simple claim. Claims of this kind are sometimes classified as imperfect nexal claims,[10] but since the fundamental basis of a nexal claim is the power of constraint, it is a contradiction to say that an act can be constrained which can be effectually avoided.[11] That the debtor of a simple claim does not plead the statute if sued, does not change the nature of the claim.

Likewise all legal transactions invalid for incapacity, informality, fraud, duress, misrepresentation, mistake, want of consideration, or any cause short of illegality, create simple claims.[12] In order that a claim may be denominated a simple claim, it must at least assimilate in its inception the form of a nexal claim. If A, who had at no time any kind of dealing with B, should claim from him, let us say, a gratuity, or payment for services never rendered or contracted for, such a demand would be neither a nexal nor a simple claim.

The question here suggests itself whether a claim, perfect in form, as presented, but invalid in substance because of a defense for the present undisclosed (e. g., claim for payment when satisfaction has

[9] *Brunswick v. Grossman* (1920, Ill. App.) 15 ILL. L. REV.—App. Ct. Dig. 34.

[10] E. g., Salmond, *Jurisprudence* (3d ed. 1910) 201, sec. 78.

[11] Cf. 1 Windscheid, *Pandekten* (9th ed. 1906) sec. 112, esp. note 5.

[12] A basis for this distinction may be found in the function of the *exceptio* in Roman law: cf. 2 Cuq, *Les institutes juridiques des Romains* (1908) 714; Salkowski, *Institutionen* (9th ed. 1907) 103, 582.

already been made) is to be regarded as a nexal or a simple claim. The answer would seem to be, that for the present, it is to be regarded as a nexal claim, but that when all the facts are disclosed, it is reduced to the level of a naked claim and not merely a simple claim, since although in its inception it may have been a nexal claim, it has been entirely dissolved by an act which the law considers legally sufficient (e. g., payment). Lapse of time, however, may reduce a nexal claim to the level of a simple claim. Likewise, by subsequent acts, a simple claim may become elevated to a nexal claim.

Simple Immunity.[13] A simple immunity is presented where one with a title of right (claim or power) or other legal advantage is secure in his title against the hostile act of another. The illustration above discussed is in point where the title of a land-owner cannot be divested by a stranger to the title. It is a situation where one cannot be affected in his legal advantages by an assertion of power in another. This assertion of power may or may not be accompanied by a duty. If there is a duty resting on the asserter of the power, the owner of the title is the *dominus* also of a nexal claim.

A procedural illustration of a simple immunity is where an action is commenced on an unfounded claim, or where a second action is begun after a prior judgment for the defendant. The immunity is against the maintenance of the action but not against its institution which is a simple power. (See *Simple Power, infra.*)

Simple Privilege.[14] Simple privilege may be illustrated by the act of a servant dealing within the contractual scope of his employment with the property of his master. If the employment is coupled with an interest, the nexal categories are involved.

It may be observed in this connection that license is not a simple, but a nexal, privilege. The connection between contract of employment and license, in its application to the physical use of property, has some external similarities, but juristically they represent different concepts. Both may be terminated at the will of the principal or licensor, as the case may be, but there is an essential difference, in this, that a license results in a restriction of freedom of action, to whatever extent it is exercised, of the licensor, while acts of agency are in furtherance of the principal's freedom of action. Accordingly, license is nexal—a legally effective limitation of the freedom of action of another until

[13] It needs to be observed that the immunity here classified as simple is regarded as a major concept by the Hohfeld school: Hohfeld, *op. cit.* note 2, at pp. 5, 60, *et passim;* cf. the criticism in Kocourek, *op. cit.* (1920) 15 ILL. L. REV. 24, 34, note 3.

[14] The term privilege is also employed by the Hohfeld school as a major legal concept, usually in the sense of liberty which entirely lacks any nexal character, and sometimes, as it seems to us, in the sense of nexal power. Hohfeld, *op. cit.* note 2, at pp. 5, 38, *et passim;* cf. the criticism in Kocourek, *op. cit.* (1920) 15 ILL. L. REV. 24, 32 ff. Since the concept liberty lacks duality, it is accordingly here excluded from representation either as a nexal or as a simple relation.

it is revoked; while acts of agency in relation to the principal are non-nexal—they do not constrain the principal.[15] It may be argued that since the licensor has freely granted the license and has it within his power to terminate it at any moment, it is contradictory to assert his restraint. The reply is that a nexal claim under a contract is subject to the same conditions. It is created freely and it may as freely be abrogated. The further reply is that the intermediate period between grant and revocation is actually under the control of the licensee.[16] It must be acknowledged, however, that some forms of license, as treated by the courts, probably must be classified under simple privilege.

Simple Power. A simple power relation exists where one may act with legal consequences (in contradistinction to legal effect), but where the law does not give effect to the act for the advantage of power-holder. A simple power may or may not be accompanied by a nexal duty not to act. Thus in making an offer, there is no accompanying duty to make or not make the offer. But in the violation of a contract or in the commission of a tort, there is an accompanying nexal duty, the violation of which creates a new nexal relation. The power of an agent to bind his principal in a contractual or a delictual obligation is probably also to be classified as a simple power, since the will of the agent, or, at any rate his capability, is derived from the principal, in the sense that it is conferred by the principal or proceeds from the institution of the agent as agent.

Each of the above categories has a simple correlative—simple duty, simple disability, simple inability, simple liability. They do not require separate discussion; but it may be noted that the categories of quasi-jural relations also exhibit the internal cross-connections which may be found in strict jural relations—reciprocals, negatives, contraries, and sub-contraries.[17] One illustration may be given. Suppose that B, not standing in any jural relation to A, demands of him a sum of money on a fictitious claim. A as the *dominus* of this non-jural relation may decline the act demanded. It will be seen (Table III, *supra*) that A's simple privilege has as its general, intermediate, negative correlative, the no-claim of B and as its specific (positive) correlative, the inability of B to make his demand effective.[18]

However, in addition to the intrinsic difference between jural and quasi-jural relations, another important distinction may be pointed out.

---

[15] Of course, in dealings with third persons the agent acts with a capability of power (i. e., the power to create, or divest legal relations between the principal and third persons), but that situation is not now in discussion. See Hohfeld, *op. cit.* note 2, at pp. 38, 52.

[16] In the Hohfeld system license is a generic term to indicate a group of operative facts required to create a particular privilege: Hohfeld, *op. cit.* note 2, at p. 50. The present writer has elsewhere expressed his dissent: Kocourek, *op. cit.* (1920) 15 ILL. L. REV. 24, 32.

[17] These internal connections are discussed in another article in (1920) 19 MICH. L. REV. 47.

In jural relations one major concept (claim or power) or its reciprocal (immunity and privilege, respectively) can not overlap with the other major concept or its reciprocal.[19] In other words, what is claim or immunity in one can not be power or privilege in another, nor can power or privilege in one be claim or immunity in another. But in quasi-jural relations this possibility is not excluded. One person may have a simple claim to an act, while another may have a simple privilege with respect to the same act. For example if A has a simple claim against B (e. g., under contract entered into through fraud of A), B owes a simple duty, but B likewise has a simple privilege of declining performance. If, on the contrary, A had a nexal claim correlated by a nexal duty of B, B clearly would not have a nexal privilege of declining performance.

Whether the terminology here proposed be accepted or not, it is clear that the relations themselves to which this terminology is applied, exist, and that they need a form of verbal expression.[20]

[18] The negatives and correlatives both of jural and quasi-jural immunity and privilege have precisely the same arrangement here (Table III, *supra*) as in the tables published by Professor Hohfeld: (1913) 23 YALE LAW JOURNAL, 16. In view of this coincidence, the credit for which belongs entirely to Professor Hohfeld by virtue of undeniable priority of formulation, the present writer may be permitted to state that the attempt here made to work out a table of quasi-jural relations, while independently justifiable by the necessities of a defective juristic terminology, was primarily undertaken in deference to the views of Professor Hohfeld and of those who have adopted his system. The criticisms heretofore ventured [Kocourek, *op. cit.* (1920) 15 ILL. L. REV. 24] of the use of the terms immunity and privilege wholly disappear if these terms are placed in a table, as here suggested, of quasi-jural relations, and if, furthermore, the term privilege is narrowed to exclude the idea of liberty which lacks the bilateral quality necessary when speaking of a legal relation whether simple or nexal. In this way the integral character of the Hohfeld system may, we believe, be preserved.

[19] Claim and immunity are subalternates or reciprocals, as are also power and privilege. Disregard of these juristic functions may account for the tables formulated by Professor Hohfeld. He saw that in legal relations there were two kinds of cases: one where X could require an act from Y (claim); another, where X could act against Y (power). Against each of these terms he placed a negative: (a) where X could not require an act from Y, Y became the *dominus* and X the *servus* (privilege—no-right); (b) where X could not act against Y, Y became the *dominus* and X the *servus* (immunity—disability). Had Professor Hohfeld adverted to the compulsory character of jural relations and made privilege not a mere negation of claim but a reciprocal of power, and immunity not a mere negation of power but a reciprocal of claim, doubtless he would have reached the same conclusions as are advanced here. Yet, as shown above, Professor Hohfeld's employment of the terms immunity and privilege may be usefully capitalized without destroying the product of his labor.

[20] It is the great merit of the late Professor Hohfeld to have insisted in a very effective and thorough-going way—and the law is his debtor for it—upon the necessity for an adequate juristic terminology. Sound terminology has the same advantage for the practical administration of justice as a sound logic, without the dangers to which formal logic sometimes leads when pressed too far. Cf. (1889) 1 BÜRG. RECHT, 240, sec. 8.